

AT A REGULAR MEETING OF THE BOARD OF SUPERVISORS OF THE COUNTY OF MONTGOMERY, VIRGINIA HELD ON THE 12th DAY OF JULY 2004, AT 7:15 P.M. IN THE BOARD CHAMBERS, MONTGOMERY COUNTY GOVERNMENT CENTER, 755 ROANOKE STREET, CHRISTIANSBURG, VIRGINIA:

PRESENT:	James D. Politis	-Chair
	Annette S. Perkins	-Vice Chair
	Mary W. Biggs	-Supervisors
	Gary D. Creed	
	Doug Marrs	
	John A. Muffo	
	Steve L. Spradlin	
	B. Clayton Goodman, III	-County Administrator
	L. Carol Edmonds	-Assistant County Administrator
	Martin M. McMahon	-County Attorney
	T.C. Powers	-Planning Director
	Robert C. Parker	-Public Information Officer
	Vickie L. Swinney	-Secretary

CALL TO ORDER AND PLEDGE OF ALLEGIANCE

The Chair called the meeting to order and the Pledge of Allegiance was recited.

PUBLIC HEARINGS

Proposed Conveyance of Right-of-Way Huckleberry Trail

Proposed conveyance of a 40 foot right-of-way across the Huckleberry Trail to provide vehicular access to Huckleberry Lane (SR 1218) from a 16 acre parcel of property in the Town of Blacksburg, identified as Tax Map No. 346-A-8, Parcel ID 004225, that adjoins the Huckleberry Trail in the Merrimac section of Montgomery County.

The Planning Director provided an overview of this request. The applicant has requested a conveyance of right-of-way across the Huckleberry Trail off Huckleberry Lane in order to access his property, which is located in the Town of Blacksburg's limits. According to Mr. Beasley his land was landlocked when the Huckleberry Trail was constructed. The Planning Director stated if the Board grants this conveyance, there are certain minimum standards that should be required for any private driveway crossing the Huckleberry

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Trail at this location and provided four conditions that need to be met by the applicant.

David Beasley, applicant, explained his request for a 40' right-of-way across the Huckleberry Trail. Mr. Beasley informed the Board he recently purchased this property and discovered the only access to the property had been removed to build the Huckleberry Trail. Therefore, he is requesting a private access entrance to his property across the Huckleberry Trail off Huckleberry Lane. He believes the conveyance will not pose a danger or be an inconvenience to trail users.

The County Administrator reported that Mr. Beasley has requested the Board act upon his request tonight instead of the July 26, 2004 meeting.

Following discussion, the majority of the Board members felt they were not prepared to vote on this request and asked for additional information as to what kind of development can occur on this parcel with a 50' and 40' right-of-way.

R-FY-05-07
Resolution Tabling The Proposed
Conveyance Of Right-Of-Way Across
The Huckleberry Trail

On a motion by Annette S. Perkins, seconded by John A. Muffo and carried,

BE IT RESOLVED, By the Board of Supervisors of the County of Montgomery, Virginia that the proposed conveyance of a 40' right-of-way across the Huckleberry Trail to provide vehicular access to Huckleberry Lane (SR 1218) from a 16 parcel of property in the Town of Blacksburg, identified at Tax Map No. 346-A-8, Parcel ID 004225, that adjoins the Huckleberry Trail in the Merrimac Section of Montgomery County is hereby **tabled to the July 26, 2004** Board of Supervisors meeting in order to receive additional information.

The vote on the foregoing resolution was as follows:

AYE

John A. Muffo
Annette S. Perkins
Mary W. Biggs
James D. Politis

NAY

Gary D. Creed
Steve L. Spradlin
Doug Marrs

PUBLIC ADDRESS SESSION

Lonnie East submitted a petition signed by citizens in the Riner area with concerns about the intersection at Childress Road and Rt 8. They are requesting a warning sign and rumble strips be installed on Childress Road to warn motorists of the stop sign before you reach Rt. 8. Mr. East explained that his niece lost her life in an automobile accident when another motorist failed to stop at the stop sign on Childress Road. He believes that motorists need to be warned about the stop sign ahead of time because the sign is hard to see until you are right in the intersection. Mr. East thanked the Board for their time and consideration in this matter.

Kenneth Shrewsberry addressed the Board with concerns about overgrown weeds at the park benches on the Huckleberry Trail near the Merrimac area.

There being no further speakers, the public address session was closed.

CONSENT AGENDA

On a motion by Mary W. Biggs seconded by John A. Muffo and carried unanimously, the Consent Agenda dated July 12, 2004 was approved.

The vote on the foregoing motion was as follows:

<u>AYE</u>	<u>NAY</u>
Mary W. Biggs	None
Doug Marrs	
Steve L. Spradlin	
Annett S. Perkins	
Gary D. Creed	
John A. Muffo	
James D. Politis	

Approval of Minutes Dated June 14, 2004

On a motion by Mary W. Biggs, seconded by John A. Muffo and carried unanimously, the minutes dated June 14, 2004 were approved.

RESOLUTION: A-FY-05-08

A-FY-05-08

**A RESOLUTION RE-APPROPRIATING
GENERAL FUND ENCUMBRANCES FROM FY-04 TO FY-05**

On a motion by Mary W. Biggs, seconded by John A. Muffo and carried unanimously,

BE IT RESOLVED, By the Board of Supervisors of Montgomery County, Virginia that the General Fund was granted an appropriation in addition to the annual appropriation for the fiscal year ending June 30, 2005, for the function and in the amount as follows:

100	Board of Supervisors	\$1,463
110	County Administration	\$13,681
111	EMS Grants	\$77,866
130	Financial and Management Services	\$5,208
140	Information Management Services	\$67,664
162	Treasurer	\$54
180	Internal Services	\$5,371
200	Commonwealth Attorney	\$1,684
210	Circuit Court	\$1,195
230	J&D Relations Court	\$1,458
250	Circuit Court Clerk	\$3,000
320	Sheriff	\$16,100
321	Sheriff B Grants	\$6,651
400	General Services	\$105,240
700	Parks and Recreation	\$6,185
710	Library	\$285,594
720	Floyd Library	\$75,717
800	Planning and Inspections	\$46,922
801	Planning Grants	\$22,098
810	Economic Development	<u>\$6,111</u>
	Total	\$749,262

The source of funds for the foregoing appropriation is as follows:

Revenue Account

451205 Designated General Fund Balance \$749,262

Said resolution re-appropriates monies supporting the balances of outstanding purchase orders.

RESOLUTION: A-FY 05-09

**A-FY-05-09
A Resolution Reappropriating
County Capital Project Fund
Encumbrances From FY 04 To FY 05**

On a motion by Mary W. Biggs, seconded by John A. Muffo and carried unanimously,

BE IT RESOLVED, By the Board of Supervisors of Montgomery County, Virginia that the County Capital Projects was granted an appropriation in addition to the annual appropriation for the fiscal year ending June 30, 2005, for the function and in the amount as follows:

110	New Government Center/Building C	\$236,798
	Courthouse Renovation	\$438,655
140	Integrated Management Information System	\$ 84,444
330	Fire and Rescue	\$332,357
400	General Services	\$ 25,634
700	Frog Pond	\$ 11,570
710	Meadowbrook Library	\$ 56,418
810	Falling Branch Industrial Park	<u>\$ 32,225</u>
	Total	\$1,218,101

The source of funds for the foregoing appropriation is as follows:

Revenue Account

451205 Designated Fund Balance \$1,218,101

Said resolution re-appropriates monies supporting the balances of outstanding purchase orders for County Capital Projects.

RESOLUTION: A-FY-05-10

**A-FY-05-10
A Resolution Reappropriating
General Fund Grant Balances**

From FY-04 To FY-05

On a motion by Mary W. Biggs, seconded by John A. Muffo and carried unanimously,

BE IT RESOLVED, By the Board of Supervisors of Montgomery County, Virginia that the General Fund was granted an appropriation in addition to the annual appropriation for the fiscal year ending June 30, 2005, for the function and in the amount as follows:

111	EMS Grants	\$83,349
321	Offender Financed Drug Program	\$ 2,776
	DARE Program	\$ 3,110
	Community Policing	\$ 2,323
	Local Law Enforcement	\$12,898
	School Resource Officer	\$36,610
	Wireless 911	\$32,555
	Project Lifesaver	\$ 9,984
	FEMA Hazard Mitigation	\$52,533
801	Dry Well Replacement	\$17,250
	Free Clinic CDBG	<u>\$22,731</u>
	Total	\$276,119

Sources of funds for the foregoing appropriation are as follows:

Revenue:

28010-434401-	FCLNCCDBG	\$22,731
28013-424401	Dry Well Replacement	\$17,250
02-451205	Designated Fund Balance	<u>\$236,138</u>
	Total	\$276,119

Said resolution appropriates those grants for which balances are known. Re-appropriated balances are needed to cover the payment of invoices received and the refund of unexpended monies.

RESOLUTION: A-FY-05-11

A-FY-05-11

A Resolution Transferring Inspections Funds To The General Services Department

On a motion by Mary W. Biggs, seconded by John A. Muffo and carried unanimously,

BE IT RESOLVED, By the Board of Supervisors of Montgomery County, Virginia that a transfer of appropriation for the fiscal year ending June 30, 2005 is hereby authorized, as follows:

FROM:

800 Planning and Inspections (\$236,644)

TO:

400 General Services \$236,644

Said resolution transfers appropriated funds from Inspections to General Services.

OLD BUSINESS

RESOLUTION: R-FY-05-01

**A Resolution Amending the Comprehensive Plan Designation
of Approximately Ten (10) Acres Identified as
Tax Parcel No. 104-A-10 in the Riner Magisterial District
from Urban Expansion/Public-Semi Public Area
to Urban Expansion/Community Business-General Business Area**

On a motion by Mary W. Biggs, seconded by Steve L. Spradlin and carried unanimously,

BE IT RESOLVED, By the Board of Supervisors of the County of Montgomery, Virginia, that the Board of Supervisors hereby amends the Comprehensive Plan designation of approximately Ten (10) acres identified as Tax Parcel No. 104-A-10 in the Riner Magisterial District from an Urban Expansion/Public-Semi Public area designation to an Urban Expansion/Community Business B General Business area designation.

The vote on the foregoing resolution was as follows:

AYE

Doug Marrs
Steve L. Spradlin
Annette S. Perkins
Gary D. Creed
John A. Muffo
Mary W. Biggs
James D. Politis

NAY

None

ORDINANCE: ORD-FY-05-01

An Ordinance Rezoning Approximately Ten (10) Acres

**Identified as Tax Parcel No. 104-A-10
Located at 2306 Tyler Road in
the Riner Magisterial District
from Agriculture (A-1) to General Business (G-B)**

On a motion by Steve L. Spradlin, seconded by Mary W. Biggs and carried unanimously,

BE IT ORDAINED, By the Board of Supervisors of the County of Montgomery, Virginia, that the Board of Supervisors hereby rezones approximately Ten (10) Acres identified as Tax Parcel No. 104-A-10 located at 2306 Tyler Road in the Riner Magisterial District from Agriculture (A-1) to General Business (G-B).

BE IT FURTHER ORDAINED, By the Board of Supervisors of the County of Montgomery, Virginia, that the Board of Supervisors hereby finds that this rezoning is in compliance with the County Comprehensive Plan and meets the requirement for public necessity, convenience, general welfare and good zoning practices.

This action was commenced upon the application of Montgomery County School Board (Agent: Montgomery County IDA).

The vote on the foregoing ordinance was as follows:

AYE

Steve L. Spradlin
Annette S. Perkins
Gary D. Creed
John A. Muffo
Mary W. Biggs
Doug Marrs
James D. Politis

NAY

None

ORDINANCE: ORD-FY-05-02

**An Ordinance Amending Chapter 10, Section 10-52,
of the Code of Montgomery County, Virginia,
Entitled Zoning, Requiring Additional Written
Notice to Be Mailed When a Planning and Zoning
Matter Has Been Tabled or Deferred by the Board of Supervisors
for More than Ninety (90) Days after the Board's Public Hearing**

On a motion by Mary W. Biggs, seconded by Annette S. Perkins and carried unanimously,

BE IT ORDAINED, By the Board of Supervisors of the County of Montgomery, Virginia, that Chapter 10, Section 10-52 of the Code of the County of Montgomery, Virginia, shall be amended and reordained as follows:

Sec. 10-52. Administration, enforcement and public hearings.

(1) *Administration.*

(a) *Zoning administrator.* It shall be the responsibility of the zoning administrator to administer, interpret and enforce the provisions of this chapter. The zoning administrator shall be guided in all of his actions pursuant to this chapter by the terms, purposes, intent and spirit of this chapter. The zoning administrator may be assisted in the enforcement of this chapter by the health officer, sheriff and all other officials of Montgomery County, Virginia, pursuant to their respective fields. Specifically, the duties and powers shall include:

1. To receive and/or review:
 - a. Applications for variances.
 - b. Notices of appeal to the BZA.
 - c. Applications for certificates of occupancy
 - d. Applications for zoning permits.
 - e. Applications for commission permits.
 - f. All other applications, certifications, or materials required by this chapter to be submitted to the zoning administrator.
2. To issue zoning permits where the requirements of this chapter have been met.
3. To issue interpretations of this chapter upon proper application. Such interpretations shall be binding as to the applicant and as to the specific facts presented in the application for interpretation after the completion of the thirty-day appeal period. In administering this chapter and rendering determinations as to the uses permitted or allowed by special use permit in the various zoning districts, the zoning administrator shall have the power and authority to render decisions as to whether a specific proposed use, although not listed as permitted or allowed by special use permit, is so

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substantially similar in substance and effect to a permitted use or a use allowed by special use permit, that it should be allowed as if expressly permitted or allowed by special use permit. Such interpretations shall include notification of appeal procedures and timelines.

4. To conduct inspections of buildings, structures and uses of land to determine compliance with the provisions of this chapter.
5. To maintain accurate records of proffered conditions as required by section 10-54(1)(i) of this chapter.

6. To enforce the provisions of this chapter, the decisions of the BZA and conditions and proffers subject to which approvals of the BZA, planning commission and board of supervisors were made.

7. To perform such other duties and functions as may be required by this chapter and the board of supervisors.

8. To maintain and make available for public inspection and copying the official zoning map, the zoning ordinance, and the minimum submission requirements adopted by board of supervisors resolution.

9. To maintain a compilation of the interpretations and opinions of the zoning administrator for public review.

(b) *Fees* The county administrator shall recommend and the board of supervisors shall adopt a schedule of fees to be paid upon the filing of each application specified in this chapter. Application fees are hereby waived for the following:

1. Applications for requested amendment from any district to a C-1 district.
2. Applications for amendment, special use permit, or commission permit sought by the following governmental agencies:
 - a. Montgomery County School Board.
 - b. Public Service Authority (PSA).
 - c. Fire and rescue companies serving Montgomery County.

(d). Any agency, board or division acting in the name of the Board of Supervisors of

Montgomery County.

- (c) *Submission requirements.* The board of supervisors shall adopt by resolution regulations enumerating those materials required to be included with each application provided for in this chapter, which materials shall constitute the minimum submission requirements for such application and be consistent with the requirements of this chapter. Such submission requirements shall include a letter signed by the applicant and by the owner of the property granting the right of entry upon the property to the zoning administrator, law enforcement agents, and county inspectors for the purpose of inspecting, and bringing law enforcement to the property, during the term of any permit which may be issued. Such submission requirements shall also include, in the case of any application for a zoning map amendment, zoning ordinance modification, zoning concept development plan amendment, special use permit, variance, site plan or zoning permit, the provision of satisfactory evidence from the treasurer's office that any real estate taxes due and owed to the county which have been properly assessed against the property have been paid and that the property shall be in compliance with all county ordinances upon submission of such application. Revisions to the list of those materials required necessitated by an amendment to this chapter shall be attached to such amendment for concurrent consideration and adoption by resolution of the board of supervisors. If the application is a reclassification to a nonplanned unit development district, a rezoning plat shall be required.
 - (d) *Inactive applications.* Any zoning map amendment application, zoning modification application, or concept development plan amendment application officially accepted by the county for processing but which has had processing suspended either by request of the applicant or by having no contact or activity occur in regards to the application by the applicant for a period of twelve (12) months or any special use permit application officially accepted by the county for processing but which has had such processing suspended either by request of the applicant or by having no contact or activity occur in regards to the application by the applicant for a period of six (6) months shall be deemed inactive. An application may remain inactive for up to three (3) years at the end of which period it will be processed to a final decision. If an applicant wishes to reactivate their application prior to the end of this three-year period, the applicant must notify the county in writing of intent to proceed with the application, grant the county an appropriate timeline extension and pay a reactivation fee as established by the board of supervisors.
- (2) *Enforcement and penalties.*
- (a) *Zoning administrator.* The zoning administrator shall have the authority and the duty to ensure that all buildings and structures and the use of all land complies with the provisions of this chapter.

(b) *General provisions.*

1. Any building or structure erected contrary to any of the provisions of this chapter and any use of any building or land which is conducted, operated or maintained contrary to any of the provisions of this chapter or the provisions of any approval granted by the county under this chapter shall be a violation of this chapter and the same is hereby declared to be unlawful.
2. Any person, whether owner, lessee, principal, agent, employee or otherwise, who violates any of the provisions of this chapter, or permits any such violation, or fails to comply with any of the requirements hereof, or who erects any building or structure or uses any building, structure or land in violation of the provisions of this chapter or the provisions of any approval granted by the county under this chapter shall be subject to the enforcement provisions of this section.
3. In addition to the remedies provided in this section, the zoning administrator may initiate injunction, mandamus, abatement or any other appropriate action to prevent, enjoin, abate or remove any unlawful building, structure or use.
4. Upon becoming aware of any violation, the zoning administrator shall serve notice of such violation on the person committing or permitting the same, and the land owner. The administrator shall, in the notice of violation, state the nature of the violation, the date that it was observed, and the remedy or remedies necessary to correct the violation. The administrator may establish a reasonable time period for the correction of the violation, however in no case shall such time period exceed thirty (30) days from the date of written notification, except that the administrator may allow a longer time period to correct the violation if the correction would require the structural alteration of a building or structure. If the violation is not corrected within the time period specified in the first notification, a second written notice shall be sent. The second notification shall request compliance with these provisions within a period not to exceed seven (7) days. If such violation has not ceased within such reasonable time as the zoning administrator has specified in such notice the zoning administrator shall institute such action as may be necessary to terminate the violation.
5. If the person responsible for the alleged violation denies that a violation exists, the person may appeal the decision of the zoning administrator pursuant to the provisions of section 10-55 of this article.
6. Whenever a violation occurs, or is alleged to have occurred, any person may file a written

complaint. Such complaint stating fully the cause and basis thereof shall be filed with the zoning administrator. The zoning administrator shall record such complaint, investigate, and take action thereon as provided by this chapter.

(c) *Criminal violations.*

1. Any violation of the provisions of this chapter shall be deemed a Class 2 criminal misdemeanor and, upon conviction thereof, shall be punishable by a fine of not more than one thousand dollars (\$1,000.00) for each separate offense. Each day during which the violation is found to have existed shall constitute a separate offense.
2. The designation of a particular violation of this chapter as a civil [violation] shall preclude criminal prosecution or sanctions, except when such violation results in injury to any person.

(d) *Civil violations.*

1. Any violation of the provisions shall be deemed a civil violation and, upon an admission of liability, shall be punishable by a fine of one hundred dollars (\$100.00) for each individual charge. The civil penalties set forth herein shall be in lieu of criminal penalties. Each day during which the violation is found to have existed shall constitute a separate offense. However, in no event shall specified violations arising from the same operative set of facts be charged more frequently than once in any ten-day period, and in no event shall a series of specified civil violations arising from the same operative set of facts result in civil penalties which exceed a total of three thousand dollars (\$3,000.00). Nothing in this subsection shall be construed as to prohibit the zoning administrator from initiating civil injunction procedures in cases of repeat offenses.
2. After having served a notice of violation on any person committing or permitting a violation of the zoning ordinance provisions and if such violation has not ceased within such reasonable time as is specified in such notice, the zoning administrator shall cause two (2) copies of a summons to be personally served upon such person. If a person complies in writing to a notice of violation, and agrees to cease said violation, no further fines shall be levied after the date of such agreement, provided such agreement is complied with.
3. The summons shall provide that any person summoned for a violation may elect to pay the civil penalty by making an appearance in person or in writing by mail to the county treasurer's office at least seventy-two (72) hours prior to the time and date fixed for trial

and, by such appearance, may enter a waiver of trial, admit liability, and pay the civil penalty established for the offense charged. Such summons shall provide that a signature to an admission of liability shall have the same force and effect as a judgment of court, however, an admission shall not be deemed a criminal conviction for any purpose.

4. If a person charged with a violation does not elect to enter a waiver of trial and admit liability, the violation shall be tried in the general district court in the same manner and with the same right of appeal as provided by law. A finding of liability shall not be deemed a criminal conviction for any purpose.
 5. Reserved.
- (3) *Public hearings, notice required.* Each public hearing involving planning and zoning matters before the planning commission, the board of supervisors and the board of zoning appeals, requires notice as set forth in section 15.2-2204 of the Virginia Code and below.
- (a) *Written notice.*
1. *Contents.* All required written notices shall contain:
 - a. The time, date and place of hearing.
 - b. A brief description of the matter being heard.
 - c. Identification of the land subject of the application including the tax map number of the property and complete street address of the property.
 2. *Second notice remailed if hearing continued.* If a public hearing is continued, or if a planning and zoning matter is deferred or tabled by the Board of Supervisors for a period more than ninety (90) days after the Board's Public Hearing, then the second notice required in such case shall be remailed.
 3. *Notice by county.* Notwithstanding any other provision of this section, whenever the notices required under this section are sent on behalf of an agency, department or division of the county, such notice shall be sent by the zoning administrator and may be sent by first class mail; however, the zoning administrator shall make affidavit that such mailings have been made and file such affidavit with the papers in the case.
 4. *Certification.* At least five (5) calendar days prior to the hearing, an affidavit, prepared by the person or persons, or their representative providing notice, shall be filed with the director of planning certifying that first and second notices have been sent and such affidavit

shall include a list of names of those to whom notice was sent. A counterpart of such affidavit shall be presented at the beginning of the public hearing on the application.

5. *Failure to receive notice.* Failure to receive any notice of a hearing required by this section, in and of itself, shall not invalidate any action taken at or subsequent to the hearing.
 6. *Condominium ownership.* In the case of a condominium, written notice may be sent to the unit owner's association instead of to each individual unit owner.
- (b) *Placard notice.* Each application shall be posted by the applicant, using a form of placard provided by the zoning administrator, at least fourteen (14) and no more than thirty (30) calendar days prior to each public hearing. County-initiated amendments involving more than ten (10) parcels shall be exempt from placard requirements.
1. *Location of placards.* Placards shall be affixed to a pole, post, fence or other structure to be clearly visible from each public road abutting the property. If no public roads abut the property, then the placard shall be posted so as to be clearly visible from at least two (2) abutting properties and at the access points to said property.
 2. *Maintenance and removal of placards.* The applicant shall maintain all placards up to the time of the hearing and shall remove all posted placards no later than fifteen (15) calendar days after the public hearing has been closed. Public hearing(s) may proceed even if placards are missing, damaged or vandalized.
 3. *Penalties.* It shall be unlawful for any person to destroy, deface or remove such placard notice. Any person taking such action shall be subject to the penalties set forth in subsection (2)(c) of this section.
- (c) *Newspaper notice.* The county shall give newspaper notice prior to each public hearing in accord with section 15.2-2204 A of the Virginia Code.
1. *Contents of newspaper notice.* The notice shall contain:
 - a. The time, date and place of the hearing;
 - b. A brief description of the matter being heard;

- c. If the matter is one for which an additional public hearing is necessary and has been scheduled before the BZA or board of supervisors, the time, date and place of the scheduled BZA or board of supervisors hearing; and
 - d. Identification of the land that is the subject of the application including the tax map number and complete address of the property.
 - e. In the case of a zoning map amendment, including an amendment to an approved concept development plan, or a modification of ordinance regulations, the general usage and density range of the proposed zoning amendment, and the general usage and density range, if any, set forth in the comprehensive plan shall be included within the notice.
- (d) *Notice requirements for particular hearings.* The following particular hearings require the following form of notice:
- 1. *Appeals to board of supervisors.* Public hearings on appeals to the board of supervisors require that the county provide newspaper notice of the hearing.
 - 2. *Appeals to board of zoning appeals.* Public hearings on appeals to the BZA require that the county provide newspaper notice of the hearing.
- (e) *Additional notice required.*
- 1. *Deferral.* If an item is not heard at the time for which it was noticed but is deferred at that time to another date, all notice required by this section shall be given of the deferred public hearing.
 - 2. *Recessed public hearings.* If a public hearing is begun but the agenda not completed, thereby requiring the meeting to be recessed, no additional notice is required as long as the dates for completion of the public hearing agenda is announced at the hearing which has been recessed.
- (f) *Speakers at public hearings.* All witnesses and speakers presenting facts and evidence at any public hearing shall provide their name, address and affiliation, if any, for the record. At the discretion of the person presiding over the hearing, witnesses or speakers may be required to give oath or affirmation regarding the truth of their statements.

The vote on the foregoing ordinance was as follows:

AYE

Annette S. Perkins

Gary D. Creed

John A. Muffo

Mary W. Biggs

Doug Marrs

Steve L. Spradlin

James D. Politis

NAY

None

ORDINANCE: ORD-FY-05-03

**An Ordinance Amending Chapter 10, Section 10-54,
of the Code of Montgomery County, Virginia,
Entitled Zoning, Special Development Approvals
by Changing When a Zoning Amendment Application
May Be Withdrawn, When the Planning Commission
Shall Hold a Public Hearing for a Requested Zoning Change
and the Time Period the Board of Supervisors and the
Board of Zoning Appeals Have to Approve
Special Use Permit Requests**

On a motion by Mary W. Biggs, seconded by Steve L. Spradlin and carried unanimously,

BE IT ORDAINED, By the Board of Supervisors of the County of Montgomery, Virginia, that Chapter 10, Section 10-54 of the Code of the County of Montgomery, Virginia, shall be amended and reordained as follows:

Sec. 10-54. Special development approvals.

- (1) Zoning amendment.
 - (a) Authority. The board of supervisors may, by ordinance, amend, supplement, change or repeal the provisions of this chapter or the boundaries of zoning classifications established in the official zoning map.
 - (b) Initiation of amendment. Either a zoning map or text amendment may be proposed by resolution of the board of supervisors or planning commission. In the case of a zoning map amendment, an application may be filed by a person who owns or has a legal interest in or is a duly authorized representative of the owner. In all events, the application must exhibit the consent of all those who have a legal ownership interest in the property under consideration. In the case of a zoning text

amendment, a landowner may file a petition for a resolution of intent to amend the ordinance text to be acted upon by the board of supervisors. The board shall either adopt such resolution, initiating the text amendment requested, or deny such petition.

- (c) Review of application. An application for a zoning map amendment shall be filed, contain such material and be reviewed pursuant to the following:

1. Pre-application conference. Prior to filing an application, an applicant may meet with the zoning administrator and discuss the intentions with regard to a given application and questions regarding the procedures or substantive requirements of this chapter. In connection with all such conferences, the director of planning shall be consulted as appropriate. A request for a pre-application conference shall be made to the zoning administrator and shall be accompanied by a sketch map of the site, a description of the proposed project or use, and a list of the issues to be discussed at the conference. No matters discussed at said meeting shall be binding on either the applicant or the county.

2. Review of application for completeness. No application shall be accepted and reviewed unless determined by the director of planning to be complete. A complete application is one which meets such minimum submission requirements as may be established pursuant to section 10-52(1)(c), including a rezoning plat. Each application shall be reviewed to determine if it includes the minimum submission requirements. The county shall maintain a current log of all pending applications.

3. Acceptance of complete application. The planning director shall either accept the application if it is complete and forward to the applicant a notice of acceptance or reject the application if it is incomplete and forward to the applicant a notice of incompleteness specifying those areas of additional information necessary for acceptance and review.

a. If notice of incompleteness is sent, the applicant may resubmit the application with the additional data required, in which event the planning director shall review the resubmitted application in the manner provided in this section for the application.

b. If the application is not resubmitted, the planning director shall notify the applicant that the original application has been rejected as incomplete.

- (d) Staff review of application.

1. Referrals. Upon acceptance of the application for zoning amendment, the planning director shall forward a copy of the application to any town and any county or state agencies whose comments are necessary or desirable for full and appropriate review of the merits of the application.

2. Referral responsibilities. Each reviewing agency shall prepare a staff report which sets out in writing its comments and recommendations regarding the application and shall forward such staff report to the

director of planning.

3. Review of referrals. Referral comments shall be obtained and reviewed by the director of planning within thirty (30) calendar days after a final application has been accepted. The planning director shall forward to the applicant a written review of the issues raised by the application.

4. Applicant response. Upon receipt of the written review, an applicant may request a meeting with the director of planning to discuss the matters contained in the written review and the application generally. Such request shall be in writing and shall include a response to the matters raised in the written review received. If the applicant's response and/or such a meeting results in an amended application, the provisions of subsection (e) hereinbelow shall apply.

5. Required action by other board. In the event this chapter requires that an application not be granted until acted upon by some government board or agency other than the planning commission or board of supervisors, then the director of planning shall forward the application for amendment to such board or agency for appropriate action prior to the notification to an applicant that an application is ready to be presented to the board of supervisors or planning commission. If it deems it appropriate, the planning commission may recommend, and the board of supervisors may approve, an application contingent on required action by the other board or boards.

6. Report and notice to applicant. The director of planning shall compile the referrals and any other necessary information, prepare a written staff report with proposed findings and a recommendation, and notify the applicant that the report is complete and the application is ready to be presented to the board of supervisors or planning commission, as appropriate, for hearing.

(e) Amendment to application. An application may be amended by the submission of additional information or proposed changes to the application after it has been accepted. If the additional information or proposed changes submitted are to conform with recommendations made by county staff, commissions or boards, then it shall not be deemed an amendment and the application shall continue to be processed on its original time line. However, if the additional information or proposed changes submitted by the applicant are at the applicant's request, then the director of planning shall review the information within fifteen (15) calendar days of receipt and render a finding as to whether the submitted information necessitates repeating any portion of the reviewing process including public hearings. If any portion must be repeated, the director will notify the applicant in writing within the fifteen (15) calendar day period that the additional information or proposed changes will require an extension of the time limits prescribed in this section and such notice shall specify the required extension. The applicant will then have fifteen (15) calendar days to provide the director with a written response either granting the necessary extension or withdrawing the additional information or proposed changes which necessitated the extension. If the applicant chooses to withdraw the information,

then the application will proceed based on its original timeline.

(f) ~~Withdrawal of application. An application may be withdrawn upon written request by the applicant any time prior to the public hearing with the consent of either the planning commission or the board of supervisors taking final action on the application. In the event of and upon such withdrawal, procession of the application shall cease without further action required by this ordinance, whichever body has advertised the hearing. No new application concerning any or all of the same property which is substantially the same as the one withdrawn shall be filed within three (3) months of the date of withdrawal, unless the respective body approving withdrawal specifies at the time it consents to withdrawal that said time limitation shall not apply.~~

(g) ~~Limitation on application after denial. After the official denial of an application by the board of supervisors, substantially the same application concerning any or all of the same property shall not be filed within one (1) year of the date of denial.~~

(h) ~~Conditional zoning. As part of classifying land within the county into areas and districts by legislative action, the county may allow reasonable conditions governing the use of such property, such conditions being in addition to, or modification of, the regulations provided for a particular zone or zoning district by this chapter.~~

(i) Proffered conditions. As part of an application for a rezoning, a property owner may proffer in writing the provision of reasonable conditions to apply and be part of the rezoning sought to be approved by said application. Proffered conditions may include written statements, development plans, profiles, elevations, or other demonstrative materials and shall be subject to the following procedures and regulations:

1. When proffers are made.

a. It is the intent of this chapter that any proffered conditions be submitted for staff review as part of an initial application for rezoning. Further, it is the intent of this chapter that revised proffers be publicly available prior to the planning commission public hearing on the application.

b. In no event shall the applicant's proposed statement of proffered conditions be submitted later than the scheduled public hearing before the board of supervisors.

2. [Approving an application subject to changes.] Nothing in this paragraph shall prevent the board of supervisors from approving an application subject to changes in proffers agreed to by an applicant at the public hearing so long as the change imposes a more restrictive standard and the ordinance adopted

accurately reflects such changes.

3. Contents of proffer. Proffered conditions shall be signed by all persons having an ownership interest in the property and shall be notarized. Proffered conditions shall contain a statement that the owners voluntarily enter into the conditions contained therein.

4. Filing and notice of accepted proffers. If the amendment to the zoning map is adopted subject to proffered conditions, then the property in question shall be appropriately annotated on the zoning map and the proffers shall be placed in the zoning administrator's official proffer file.

5. Proffers govern development. Upon final approval by the board of supervisors proffered conditions shall become a part of the zoning regulations applicable to the property unless subsequently changed by an amendment to the zoning map, which amendment is not part of a comprehensive implementation of a new or substantially revised zoning ordinance, and such conditions shall be in addition to the specific regulations set forth in this chapter for the zoning district in question.

6. Substantial conformance required. Upon approval of a rezoning with proffers, any site plan, subdivision plat, development plan or other application for development thereafter submitted shall be in substantial conformance with all proffered conditions. No development shall be approved by any county official in the absence of said substantial conformance.

7. Substantial conformance defined. For the purpose of this section, substantial conformance shall be determined by the zoning administrator and shall mean that conformance which leaves a reasonable margin for adjustment due to final design or engineering data but conforms with the general nature of the development, the specific uses, and the general layout depicted by the plans, profiles, elevations, and other demonstrative materials proffered by the applicant.

8. Enforcement of proffers. The zoning administrator shall be vested with all necessary authority on behalf of the board of supervisors to administer and enforce proffered conditions. Such authority shall include the ability to order, in writing, the remedy of any noncompliance with a proffered condition and the ability to bring legal action to ensure compliance including injunction, abatement, or other appropriate action or proceedings, as provided for in section 10-55 of this chapter. Any person, group, company, or organization aggrieved by an interpretation of the zoning administrator may appeal such interpretation as defined by subsection 11. of this subsection.

9. Guarantee for construction of improvements. A guarantee, satisfactory to the board, may be required in an amount sufficient for and conditioned upon the construction of any public improvements required by the proffered conditions. This guarantee may be reduced or released by the board or agent thereof, upon the submission of satisfactory evidence that the construction of such improvements has been

completed in whole or in part. Said guarantee shall be required no later than final site plan or subdivision approval.

10. No permits shall be issued not in compliance with proffers. Failure to meet or comply with any proffered conditions shall be sufficient cause to deny the issuance of any site plan or subdivision approvals, grading permits, zoning permits, building permits, or certificates of occupancy as may be determined appropriate by the zoning administrator. In addition to the other penalties appropriate for violations of this chapter, failure to meet or comply with any proffered condition shall be sufficient cause to deny the issuance of any development approvals or permits relating to the land area which was the subject of the conditional zoning. To this end, each application for a development approval or permit shall include an affidavit by the applicant that all applicable proffers have or will be complied with as agreed upon at the time of rezoning. The burden shall be on the applicant to verify that proposed development complies with any and all proffered conditions.

11. Appeal of proffer decision. Any person aggrieved by a decision of the zoning administrator regarding any proffered condition may appeal such decision to the board of supervisors. Such appeal shall be filed within thirty (30) calendar days from the date of the decision appealed by filing a notice of appeal with the zoning administrator. Such notice shall be a written statement specifying the grounds on which aggrieved and the basis for the appeal. Upon receipt of the appeal notice, the board of supervisors shall take such testimony as it deems appropriate and shall render its decision within sixty (60) calendar days after receipt of the appeal notice. The board of supervisors may reverse or affirm wholly or partly or may modify the decision of the zoning administrator.

(j) Planning commission hearing. No later than ~~forty-five (45)~~ forty (40) calendar days after an application has been ~~accepted~~ referred to the Planning Commission, the planning commission shall hold a duly noticed public hearing on an application for a zoning amendment.

(k) Report by planning commission. The planning commission shall report to the board of supervisors its recommendation with respect to the proposed amendment.

1. The planning commission need not confine its recommendation to the proposed amendment as set forth in the application. If the proposed amendment consists of a change in the text of this chapter, it may recommend a revision to the proposal. If the proposed amendment consists of a change in zoning district boundaries, it may reduce or enlarge the extent of land that it recommends be rezoned; or it may recommend that the land be rezoned to a different zoning district classification than that requested if, in either case, the commission is of the opinion that such revision is in accordance with sound zoning practice and the adopted comprehensive plan, and is in furtherance of the purposes of this chapter. Before recommending a larger extent of land or a rezoning to a more intensive classification than was set forth in the application, the

commission shall hold an additional duly noticed public hearing on the matter.

2. In recommending the adoption of any proposed amendment to this chapter, the planning commission may state its reason for such recommendation, describing any changes in conditions, if any, that it believes make the proposed amendment advisable and specifically setting forth the manner in which, in its opinion, the proposed amendment would be in harmony with the adopted comprehensive plan and would be in furtherance of the purpose of this chapter.

3. Text amendments. If the request is for an amendment of the text of this chapter, the planning commission shall consider the following matters:

a. Whether the proposed text amendment is consistent with the comprehensive plan.

b. Whether the proposed text amendment is consistent with the intent and purpose of this chapter.

4. Zoning map amendments. If the application is for a reclassification of property to a different zoning district classification on the zoning map, the applicant shall address all the following in its statement of justification or plat unless not applicable. The planning commission shall give reasonable consideration to the following matters:

a. Whether the proposed zoning district classification is consistent with the comprehensive plan.

b. Whether there are any changed or changing conditions in the area affected that make the proposed rezoning appropriate.

c. Whether the range of uses in the proposed zoning district classification are compatible with the uses permitted on other property in the immediate vicinity.

d. Whether adequate utility, sewer and water, transportation, school and other facilities exist or can be provided to serve the uses that would be permitted on the property if it were rezoned.

e. The effect of the proposed rezoning on the county's ground water supply.

f. The effect of uses allowed by the proposed rezoning on the structural capacity of the soils.

g. The impact that the uses that would be permitted if the property were rezoned will have upon the volume of vehicular and pedestrian traffic and traffic safety in the vicinity and whether the proposed rezoning uses sufficient measures to mitigate the impact of through construction traffic on existing neighborhoods and school areas.

h. Whether a reasonably viable economic use of the subject property exists under the current zoning.

- i. The effect of the proposed rezoning on environmentally sensitive land or natural features, wildlife habitat, vegetation, water quality and air quality.
- j. Whether the proposed rezoning encourages economic development activities in areas designated by the comprehensive plan and provides desirable employment and enlarges the tax base.
- k. Whether the proposed rezoning considers the needs of agriculture, industry, and businesses in future growth.
- l. Whether the proposed rezoning considers the current and future requirements of the community as to land for various purposes as determined by population and economic studies.
- m. Whether the proposed rezoning encourages the conservation of properties and their values and the encouragement of the most appropriate use of land throughout the county.
- n. Whether the proposed rezoning considers trends of growth or changes, employment, and economic factors, the need for housing, probable future economic and population growth of the county.
- o. The effect of the proposed rezoning to provide moderate housing by enhancing opportunities for all qualified residents of Montgomery County.
- p. The effect of the rezoning on natural, scenic, archaeological, or historic features of significant importance.

The planning commission shall make its recommendation to the board within sixty (60) calendar days after the public hearing of the commission.

- (l) Hearing before board of supervisors. A duly noticed public hearing shall be held by the board of supervisors regarding an application for zoning amendment.
- (m) Action by board of supervisors. After the conclusion of its public hearing, the board of supervisors shall act on the application for rezoning. The board of supervisors need not confine its action to the proposed amendment as set forth in the application. If the proposed amendment consists of a change in the text of this chapter, it may act on a revision to the application. If the proposed amendment consists of a change in zoning district boundaries, it may reduce or enlarge the extent of land that it rezones or it may rezone the land to a different zoning district classification than that requested if, in either case, it is of the opinion that such revision is in accordance with sound zoning practice and the adopted comprehensive plan and is in furtherance of the purposes of this chapter. Before rezoning a larger extent of land or rezoning the land to a more intensive classification than was set forth in the application, the board shall hold a further duly noticed public hearing on the matter.

(n) Evidentiary matters before board of supervisors. All information, testimony or other evidence presented by an applicant for zoning amendment shall be presented to the planning commission in conjunction with its review and hearing on the application. If the board of supervisors determines that an applicant is presenting evidence which is substantially or materially different from that presented to the commission, the board may refer the application back to the commission for such additional consideration and action as the board may deem appropriate.

(2) Rezoning to planned unit development district.

(a) Purpose. The provisions of this section establish special procedures for approving concept development plans for planned unit development districts. The procedures herein established are in recognition of the fact that traditional density, bulk, spacing and use regulations, which may be useful in protecting the character of substantially developed areas, may impose inappropriate and unduly rigid restrictions upon the development of parcels or areas which lend themselves to a unified, planned approach. A planned unit development shall be designed to ensure that the following general goals will be achieved.

1. The proposed development shall be of such design that it promotes achievement of the stated purposes of the comprehensive plan and is consistent with the plan as well as other adopted plans and policies of the county.

2. The development will efficiently use available land and will protect and preserve, to the extent possible, natural features of the land such as trees, streams and topographic features.

3. The development will be located in an area in which transportation, police and fire protection, schools and other public facilities and public utilities, including water and sewerage, are or will be available and adequate for the uses proposed. The applicant may, where appropriate, make provision for such facilities or utilities which are not presently available.

(b) Modifications. The regulations of the PUD district sought shall apply after rezoning is approved unless the board of supervisors finds that the zoning, subdivision or other requirements that would otherwise apply should be modified because the actions, designs or solutions proposed by the applicant, although not literally in accord with the applicable regulations, will satisfy public purposes to at least an equivalent degree. No modifications shall be permitted which affect uses, density, or floor area ratio of the district. Modifications to an approved concept development plan may be approved as set forth in subsection (i), hereinbelow.

(c) Concept development plan/submission requirements; purpose and effect. An application for rezoning to a planned unit development district shall include a concept development plan incorporating the format and information required as detailed in the pud checklist and such additional information as the

applicant may deem necessary to provide a detailed understanding of the proposed planned unit development. The number of copies shall be determined by the zoning administrator.

(d) Contents of an approved concept development plan. The concept development plan shall contain provisions to regulate the intensity of development within the planned unit development district, including estimated acreage of land bays or subareas with accompanying densities. Such provisions may apply to the project as a whole or to subareas within the project. Without limiting the foregoing, the plan shall depict:

1. Nonresidential densities. For nonresidential development, (a) the floor area ratio or ratios; (b) the maximum gross floor area for the project as a whole or for components or subareas within the project; (c) the setbacks, height, and bulk restrictions for the project as a whole or for components or subareas within the project. In addition, nonresidential development plans shall specify any applicable performance standards that are imposed and restrictions regarding the location and nature of industrial, commercial and other nonresidential activities.

2. Residential densities. For residential developments, (a) the maximum number of dwelling units for the project, (b) individual lot size, height and other building restrictions for the project as a whole or for individual subareas within the project; and (c) the distribution of residential densities for the project or individual subareas within the project sufficient to enable the county to judge the plan and compare future development to it for consistency.

3. Public facilities. For residential and nonresidential developments, the approved conditions, restrictions and standards relating to ensuring the timely provision of necessary public facilities based on conformity with the existing comprehensive plan and capital improvements program and any proffers made by the applicant.

4. Transportation/access. For residential and nonresidential development, the approved location and general design of transportation improvements and ingress and egress to the project, along with such access restrictions as are imposed to promote and ensure the integrity and function of the county's thoroughfare system and the safe and efficient circulation of vehicles and pedestrians within the planned unit development district.

5. Modification. For residential and nonresidential developments, any approved modifications to any provisions of this chapter, the land subdivision and development ordinance, or any other applicable county ordinance which would otherwise be applicable to the development and which are to be modified. The statement regarding modifications shall set forth clearly the text of the approved modification and the justification therefore.

(e) Optional joint approvals. At the applicant's option, an application for site plan and/or preliminary subdivision plat approval may be submitted in conjunction with an application for a rezoning to a planned unit development district. In such case, the applications shall be reviewed together pursuant to their

respective standards, the time limits for rezoning shall apply to the joint application, and no approval of a site plan or preliminary subdivision plat shall be effective unless and until the application for rezoning to planned unit development has been approved by the board of supervisors. The application for site plan and/or subdivision approval may be for the entire planned unit development site or for a phase thereof which is consistent with the phasing plan ultimately adopted by the board.

(f) Approved changes to concept development plan after approval.

1. Minor change. Any proposed change or changes to an approved concept development plan which meets the following criteria shall be considered a minor change and may be permitted if approved by the zoning administrator.

a. Decreases by less than five (5) percent the area approved for public and private open space.

b. Relocates or modifies approved circulation elements as a result of more detailed engineering or changes requested by staff or VDOT, unless the change would decrease the ability of such elements to function efficiently, adversely affect their relation to surrounding lands and circulation elements, or would reduce their effectiveness as buffers or amenities.

c. Any decrease in residential units or nonresidential floor space.

2. Special use permit change. The following change or changes to an approved development plan may be made by special use permit approved by the board of supervisors.

a. Increases by less than five (5) percent of the total number of units to be devoted to any particular residential or nonresidential use.

b. Increases by less than five (5) percent of the total floor area to be devoted to any particular nonresidential use.

c. Alteration of the arrangement of land uses, or land bays, within the planned unit development.

3. Major change. Other than the minor adjustments authorized by subsection 1. above, if an approved development plan is amended, varied or altered, such change shall be reviewed pursuant to the procedures established by this section for its original approval.

4. Minimum submission requirements. The minimum submission requirements for changes to an approved concept development plan shall be the same for either a new or an amended plan. Changes being made may be shown only for those areas affected, not the entire concept development plan.

(3) Special use permits.

(a) Purpose. The special use permit procedure is designed to provide the board of supervisors and in those specific instances, the Board of Zoning Appeals with an opportunity for discretionary review of requests to establish or construct uses or structures which have the potential for a deleterious impact upon the health, safety, and welfare of the public; and, in the event such uses or structures are approved, the authority to impose conditions that are designed to avoid, minimize or mitigate potentially adverse effects upon the community or other properties in the vicinity of the proposed use or structure.

(b) Authorized special use permit uses. Only those special use permits that are expressly authorized as such in a particular zoning district, or elsewhere in this chapter may be approved.

(c) Review of application. The board of supervisors and in those specific instances, the Board of Zoning Appeals may permit a special use permit as part of a zoning map amendment, or by special use permit procedures at any time after a zoning map amendment.

(d) Application. An application for a special use permit from the Board of Supervisors shall be filed, contain such material and be processed in the same general fashion as detailed for zoning amendments at subsections (1)(c) through (g). An application for a special use permit from the Board of Zoning Appeals shall be made to the zoning administrator in accordance with the rules adopted by the Board of Zoning Appeals. The application and accompanying maps, plans or other information shall be transmitted promptly to the secretary of the board who shall place the matter on the docket to be acted upon by the Board. The zoning administrator shall transmit a copy of the application to the Planning Commission which may send a recommendation to the Board of Zoning Appeals or appear as a party at the hearing.

(e) Planning commission hearing. Prior to a decision by the board of supervisors each application for special use permit shall be the subject of a public hearing and a recommendation made by the planning commission.

(f) Board hearing. A duly noticed public hearing on an application for a special use permit shall be held by the board of supervisors and in those specific instances, the Board of Zoning Appeals and a decision made by it within a reasonable time, not to exceed one year from ninety (90) calendar days of the date on which the application was accepted for processing unless the applicant agrees to a longer time period.

(g) Issues for consideration. In considering a special use permit application, the following factors shall be given reasonable consideration. The applicant shall address all the following in its statement of justification or special use permit plat unless not applicable, in addition to any other standards imposed by this chapter:

1. Whether the proposed special use permit is consistent with the comprehensive plan.
2. Whether the proposed special use permit will adequately provide for safety from fire hazards and

have effective measures of fire control.

3. The level and impact of any noise emanating from the site, including that generated by the proposed use, in relation to the uses in the immediate area.
4. The glare or light that may be generated by the proposed use in relation to uses in the immediate area.
5. The proposed location, lighting and type of signs in relation to the proposed use, uses in the area, and the sign requirements of this chapter.
6. The compatibility of the proposed use with other existing or proposed uses in the neighborhood, and adjacent parcels.
7. The location and area footprint with dimensions (all drawn to scale), nature and height of existing or proposed buildings, structures, walls, and fences on the site and in the neighborhood.
8. The nature and extent of existing or proposed landscaping, screening and buffering on the site and in the neighborhood.
9. The timing and phasing of the proposed development and the duration of the proposed use.
10. Whether the proposed special use permit will result in the preservation or destruction, loss or damage of any topographic or physical, natural, scenic, archaeological or historic feature of significant importance.
11. Whether the proposed special use permit at the specified location will contribute to or promote the welfare or convenience of the public.
12. The traffic expected to be generated by the proposed use, the adequacy of access roads and the vehicular and pedestrian circulation elements (on- and off-site) of the proposed use, all in relation to the public's interest in pedestrian and vehicular safety and efficient traffic movement.
13. Whether, in the case of existing structures proposed to be converted to uses requiring a special use permit, the structures meet all code requirements of Montgomery County.
14. Whether the proposed special use permit will be served adequately by essential public facilities and services.
15. The effect of the proposed special use permit on groundwater supply.

16. The effect of the proposed special use permit on the structural capacity of the soils.
17. Whether the proposed use will facilitate orderly and safe road development and transportation.
18. The effect of the proposed special use permit on environmentally sensitive land or natural features, wildlife habitat and vegetation, water quality and air quality.
19. Whether the proposed special use permit use will provide desirable employment and enlarge the tax base by encouraging economic development activities consistent with the comprehensive plan.
20. Whether the proposed special use permit considers the needs of agriculture, industry, and businesses in future growth.
21. The effect of the proposed special use permit use in enhancing affordable shelter opportunities for residents of the county.
22. The location, character, and size of any outdoor storage.
23. The proposed use of open space.
24. The location of any major floodplain and steep slopes.
25. The location and use of any existing nonconforming uses and structures.
26. The location and type of any fuel and fuel storage.
27. The location and use of any anticipated accessory uses and structures.
28. The area of each use, if appropriate.
29. The proposed days/hours of operation.
30. The location and screening of parking and loading spaces and/or areas.
31. The location and nature of any proposed security features and provisions.
32. The number of employees.
33. The location of any existing and/or proposed adequate on- and off-site infrastructure
34. Any anticipated odors which may be generated by the uses on site.

35. Whether the proposed special use permit uses sufficient measure to mitigate the impact of construction traffic on existing neighborhoods and school areas.

(h) Conditions and restrictions. In approving a special use permit, the board of supervisors or in those specific instances the Board of Zoning Appeals may impose such conditions, safeguards and restrictions upon the premises benefited by the special use permit as may be necessary to avoid, minimize or mitigate any potentially adverse or injurious effect of such special use permits upon other property in the neighborhood, and to carry out the general purpose and intent of this chapter. Conditions and restrictions may include, but are not limited to, those related to fencing, planting or other landscaping, additional set backs from property lines, location and arrangement of lighting, setting of reasonable time limitations and other reasonable requirements deemed necessary to safeguard the interest of the general public. The boards may require a guarantee or bond to ensure that conditions imposed will be complied with. All required conditions shall be set out in the documentation approving the special use permit.

(i) Effect of issuance of a permit for a special use permit. The issuance of a permit for a special use permit shall not authorize the establishment or extension of any use nor the development, construction, reconstruction, alteration or moving of any building or structure, but shall merely authorize the preparation, filing and processing of applications for any permits or approvals which may be required by the codes and ordinances of the county, including, but not limited to, a building permit, a certificate of occupancy, site plan and subdivision approval and a zoning permit.

(j) Period of validity.

1. Authorization of a special use permit shall be void after two (2) years or such lesser time as the authorization may specify unless substantial construction has taken place, however, the board of supervisors or in those specific instances, the Board of Zoning Appeals may extend authorization for an additional period not to exceed one (1) year, upon request by the applicant.

2. If any special use authorized by this article is discontinued for a period exceeding two (2) years, it shall be deemed abandoned, and the special use permit shall be void.

The vote on the foregoing ordinance was as follows:

AYE

Gary D. Creed

John A. Muffo

Mary W. Biggs

Doug Marrs

NAY

None

Steve L. Spradlin
Annette S. Perkins
James D. Politis

ORDINANCE: ORD-FY-05-04

**An Ordinance Amending the Merchants Capital Tax
By Returning to the Single Assessment Date of January 1 by
Eliminating the Requirement That the Taxpayer Determine Its
Merchant Capital Return by Averaging Capital Held out for
Sale on January 1 and the next Proceeding August 1**

On a motion by Mary W. Biggs, seconded by Steve L. Spradlin and carried,

BE IT ORDAINED, By the Board of Supervisors of the County of Montgomery, Virginia, that the Board of Supervisors hereby amends the Merchants Capital Tax by returning to a single assessment date of January 1 by eliminating the requirement that the taxpayer determine its Merchant Capital return by averaging the capital held out for sale on January 1 and the next proceeding August

This change shall take effective immediately.

The vote on the foregoing resolution was as follows:

AYE

Mary W. Biggs
Doug Marrs
Steve L. Spradlin
Gary D. Creed
Annette S. Perkins
James D. Politis

NAY

John A. Muffo

ORDINANCE: ORD-FY-05-05

**An Ordinance Amending the Merchants Capital Tax
by Reducing the Merchants Capital Tax Rate
from \$4.50 to \$3.05 per \$100
of Assessed Value with the Rate Change
Effective January 1, 2005**

On a motion by Steve L. Spradlin, seconded by Gary D. Creed and carried,

BE IT ORDAINED, By the Board of Supervisors of the County of Montgomery, Virginia, that the Board of Supervisors hereby further amends the Merchants Capital Tax by reducing the Merchants Capital tax rate from \$4.50 to \$3.05 per \$100 of assessed value with the rate change effective January 1, 2005.

The vote on the foregoing ordinance was as follows:

AYE

Doug Marrs
Steve L. Spradlin
Gary D. Creed
James D. Politis

NAY

Mary W. Biggs
Annette S. Perkins
John A. Muffo

RESOLUTION: R-FY-05-02

**Montgomery County-s
Legislative Priorities for 2005**

On a motion by Annette S. Perkins, seconded by Mary W. Biggs and carried unanimously,

BE IT RESOLVED, The Montgomery County Board of Supervisors hereby adopts their 2005 legislative priorities as follows:

FINANCE

Unfunded mandates Montgomery County continues to oppose unfunded mandates from the state or federal government.

Compensation Board Montgomery County supports full state funding for positions and operational costs for constitutional offices.

Judicial System Montgomery County supports legislation to provide adequate state funding for support personnel, offices and equipment for any judicial position it creates.

Interest on Erroneously Assessed Taxes Montgomery County supports amending 58.1-3916 of the Code of Virginia, 1950, as amended, to add language stating that a locality does not have to provide for interest on overpayments due to erroneously assessed taxes when an act or omission on the taxpayers part contributed to the erroneous assessment.

Local Revenue If the General Assembly removes or curtails any local revenue source, Montgomery County insists that the General Assembly fully replace the lost local revenue with state funds in amounts to capture projected economic growth and local need. If the state chooses to curtail any local revenue sources, Montgomery County would support the state becoming fully responsible for services currently provided by local governments in a dollar amount no less than any lost local revenues plus any growth in costs of such services. Montgomery County opposes any effort to restrict or limit the growth of real estate revenue, real estate assessments or real estate tax rates.

Montgomery County supports legislation to provide local governments the authority to levy impact fees to pay for cost of capital facilities for new developments, including road construction and maintenance.

Portion of Income Taxes Returned to Localities Montgomery County supports legislation to distribute a percentage of individual income tax revenues to localities, or the authority to levy a local income tax.

Local Option Sales and use tax Montgomery County supports a harmless provision to ensure localities are not subject to a loss of revenue due to the reduction in this tax.

Merchants Capital and BPOL Tax Montgomery County supports a harmless provision to ensure localities are not subject to a loss of revenue due to the reduction in this tax.

Impact on local tax base of state-owned land Montgomery County requests that the Joint Legislative Audit and Review Commission (JLARC) prepare a financial impact analysis of real estate taxes that would have been received from land and buildings owned by Virginia Polytechnic Institute and State University, the Virginia Tech Foundation, and Radford University Foundation to determine the loss in revenue to Montgomery County.

Situs for Taxation Montgomery County supports legislation amending Section 58.1-3511A of the Code of Virginia, 1950, as amended, requiring that situs for the assessment and taxation of tangible personal property, merchant's capital and machinery and tools (would not include motor vehicles, travel trailers, boats and airplanes which are already assessed based on where they are normally garaged, docked or parked) be the county, district, town or city in which the property is normally used, located or held out for sale instead of where the property may be physically located on tax day. The purpose of the change is to

prevent tax payers from being able to move their tangible personal property, merchants capital or machinery and tools out of the locality where the property is normally kept throughout the year on tax day in order to avoid being assessed for the tax by claiming that the property was not physically located in the locality on tax day.

Equal Taxing Authority Montgomery County supports legislation to eliminate the distinction in the taxing authority of Virginia's cities and counties.

Study on Restructuring Tax Law Montgomery County supports a timely conclusion to the study on restructuring tax laws by seeking out and incorporating local government input into the study recommendations, and expeditiously enacting legislation to implement these recommendations.

Assessments for Courthouse Construction, Renovation or Maintenance Montgomery County supports amending Section 17.1-281 of the Code of Virginia of 1950, as amended, allowing localities to increase the fees for each civil and criminal action filed in the district or circuit court from Two Dollars (\$2.00) to Ten Dollars (\$10.00) per case.

LAND USE

Land Use Montgomery County supports legislation that requires state agencies to comply with local land use ordinances.

Local Zoning Regulatory Standards Montgomery County opposes legislation which constrains local authority over land use issues; and therefore; opposes legislation that would mandate localities to treat certain manufactured homes the same as site-built homes for purposes of local zoning regulatory standards.

State Corporation Commission-Public Service Corporations Montgomery County supports legislation that requires public utility service corporations when applying for a certificate of convenience and necessity to construct or enlarge any facility from the State Corporation Commission, to first provide written notice to persons residing or owning property within the affected area.

Updating Existing Floodplain Mapping. Montgomery County supports legislation that would enhance and/or increase the use of federal funding for updating existing floodplain mapping, particularly in Montgomery County. Montgomery County supports state funding of the Department of Conservation and Recreation efforts to assist communities in this flood map modernization effort.

EDUCATION

School. Montgomery County supports full funding of SOQ so that a redistribution of existing state aid among jurisdictions does not occur without an increase of state funds. Montgomery County supports state funding allocated for teacher pay raises based on actual positions, not just positions recognized in the SOQ. Montgomery County supports Acost for competing Add-on@ funding for all Virginia School Districts.

JLARC Recommendations Montgomery County recognizes the progress made in implementing the Joint Legislative Audit and Review Commission (JLARC) recommendations for state funding of public education K-12 and supports continued efforts to implement these recommendations.

School Construction Montgomery County supports adequate state funding for school construction and renovations.

School Technology Montgomery County supports state funding for annual technology upgrades and replacements.

HEALTH, HUMAN AND SOCIAL SERVICES

Comprehensive Services Act (CSA) Montgomery County supports full state funding for 100% of the costs of CSA.

Health Department Montgomery County supports full state funding for 100% of the costs of the Health Department.

ENVIRONMENT AND AGRICULTURE

Water and Sewer availability fees Montgomery County supports legislation that would grant counties the authority to enact water and sewer availability fees, and mandatory water and sewer connection powers.

The vote on the foregoing resolution was as follows:

<u>AYE</u>	<u>NAY</u>
Steve L. Spradlin	None
Doug Marrs	

Mary W. Biggs
Gary D. Creed
John A. Muffo
Annette S. Perkins
James D. Politis

RESOLUTION: R-FY-05-03

**Remove From The Table -
Establishing A Towing Advisory Board**

On a motion by Mary W. Biggs, seconded by Doug Marrs and carried unanimously,

BE IT RESOLVED, The Board of Supervisors of Montgomery County, Virginia hereby removes the Establishing a Towing Advisory Board from the table.

The vote on the foregoing resolution was as follows:

AYE

Doug Marrs
Steve L. Spradlin
Annette S. Perkins
Gary D. Creed
John A. Muffo
Mary W. Biggs
James D. Politis

NAY

None

RESOLUTION: R-FY-05-04

ESTABLISHING A TOWING ADVISORY BOARD

On a motion by Gary D. Creed, seconded by Doug Marrs and carried unanimously,

BE IT RESOLVED, By the Board of Supervisors of the County of Montgomery, Virginia, that the Board of Supervisors hereby establishes an advisory board to be known as the Towing Advisory Board. The Towing Advisory Board shall derive its authority from and be administered by the Board of

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Supervisors. The Advisory Board shall be appointed by the Board of Supervisors and shall consist of the following:

1. One (1) representative from the Montgomery County Sheriff's Office
2. One (1) representative from the Virginia State Police
3. Three (3) representatives from the towing and recovery operator community who do towing and recovery business in Montgomery County, Virginia
4. One (1) representative from the Montgomery County Fire & Rescue Departments
5. Three (3) residents of Montgomery County, Virginia; and
6. One (1) alternate from each of the above.

The members of the Advisory Board shall be appointed for terms of four years; provided, however, the first appointed member shall have staggered terms with three (3) members being appointed for a two-year term, three (3) members being appointed for three year terms and three (3) members being appointed for four year terms. All subsequent appointments shall be four (4) year terms. All vacancies on the board shall be filled by the Board of Supervisors for the unexpired portion of the term. The members of the Advisory Board shall serve without compensation. The Board shall elect annually a chairperson, vice-chairman and secretary from among its members. The Advisory Board shall establish its own set of by-laws and rules of procedures. The Advisory Board shall hold meetings on such days and at such hours as may be fixed by the Board.

BE IT FURTHER RESOLVED, By the Board of Supervisors that it shall be the duties and purpose of the Advisory Board to act in an advisory capacity and make recommendations to the Board of Supervisors on issues relating to rates to be charged by towing or recovery operators for towing within the County, the regulations that towing or recovery operators are to be regulated by, and such other duties as may be assigned to it by the Board of Supervisors.

The vote on the foregoing resolution was as follows:

AYE

Doug Marrs

Mary W. Biggs

Steve L. Spradlin

Annette S. Perkins

NAY

None

Gary D. Creed
John A. Muffo
James D. Politis

NEW BUSINESS

RESOLUTION: A-FY-05-12

**JUVENILE AND DOMESTIC RELATIONS COURT
TRANSFER FROM GENERAL CONTINGENCIES**

On a motion by Annette S. Perkins, seconded by Mary W. Biggs and carried unanimously,

BE IT RESOLVED, By the Board of Supervisors of Montgomery County, Virginia that a transfer of appropriation is hereby authorized, as follows:

FROM:

950 General Contingencies (\$2,594)

TO:

230 JD& R Court \$2,594

Said resolution transfers appropriated funds from General Contingencies to J&DR Court to cover the cost of a fax machine and a shredder.

The vote on the foregoing resolution was as follows:

AYE

Annette S. Perkins
Gary D. Creed
John A. Muffo
Mary W. Biggs
Doug Marrs
Steve L. Spradlin
James D. Politis

NAY

None

RESOLUTION: R-FY-05-06

**RESOLUTION OF APPRECIATION
JOHNSON REYNOLDS
LONG SHOP/MCCOY RESCUE SQUAD**

On a motion by Mary W. Biggs, seconded by Steve L. Spradlin and carried unanimously,

WHEREAS, *Johnson Reynolds* is a charter member of the Long Shop/McCoy Volunteer Fire Department since 1961 and a charter and founding member of the Long Shop/McCoy Rescue Squad since 1971; and

WHEREAS, *Johnson Reynolds* continues to serve as an active member of both organizations today; and

WHEREAS, *Johnson Reynolds* has been an Emergency Medical Technician for over 25 years, and is certified in vehicle extrication, cave rescue, farm machinery extrication, and emergency vehicle operators course; and

WHEREAS, *Johnson Reynolds* has held the offices of 2nd Lieutenant, 1st Lieutenant and Captain of the Long Shop/McCoy Rescue Squad and has served two terms as Chaplin for the Virginia Association of Volunteer Rescue Squads; and

WHEREAS, On June 14, 2004 *Johnson Reynolds* was presented an award for being Best Pre-Hospital Provider for the twelve (12) county Western District for the Virginia Office of Emergency Medical Services.

NOW, THEREFORE, BE IT RESOLVED, The Board of Supervisors of the County of Montgomery, Virginia, on behalf of the entire citizenship, extends a unanimous vote of appreciation and gratitude to ***Johnson Reynolds*** for his outstanding dedication to the citizens of Montgomery County.

BE IT FURTHER RESOLVED, That the original of this resolution be presented to ***Johnson Reynolds*** and that a copy be made a part of the officials Minutes of Montgomery County.

The vote on the foregoing resolution was as follows:

AYE

Doug Marrs

Steve L. Spradlin

Annette S. Perkins

Gary D. Creed

John A. Muffo

Mary W. Biggs

James D. Politis

NAY

None

COUNTY ADMINISTRATOR-S REPORT

Noise at Corning The County Administrator reported on July 8, 2004, he and Brian Hamilton met with three Corning representatives to discuss Mr. W.P. Turpin's issues raised in the past concerning noise coming from the Corning Plant. Corning's Plant Manager advised that Corning has spent approximately \$15,000 to install noise-suppressing equipment to reduce the noise emitting from the Corning Plant. The first noise suppressing equipment was installed October 15, 2001. A noise report was prepared dated May 13, 2002 and forwarded to Mr. Turpin. The conclusion of this report was that Corning was not in violation of the Town of Christiansburg Code regarding noise. Corning however, submitted three recommendations, which were completed in June 2003. The recommendations included installing a circular type silencer to control the noise of one of several exhaust stacks; install special design ventilated acoustic enclosures around dust collector exhaust fans; and after noise abatement equipment are fabricated and installed another environmental survey needs to be conducted. The Plant Manager thought this had helped the situation, but Mr. Turpin started contacting Corning again in January 2004 stating the problem had not been resolved. All three Corning representatives stated their concern with the issue and believe they have tried to address Mr. Turpin's complaints, but at this time are at a loss of what do to next.

The County Administrator stated they are still in the process of trying to identify the source of the noise and will keep the Board informed on this matter.

Fire and Rescue Service Rings Dinner

On July 9, 2004, members of the Elliston Volunteer Fire Department, Riner Volunteer Fire Department, Long Shop/McCoy Volunteer Fire and Rescue Department and the Shawsville Volunteer Rescue Squad were awarded service rings. Volunteer members who have served 10 + years were awarded the rings. There were 99 members recognized.

BOARD MEMBERS- REPORTS

Supervisor Perkins attended a Workforce Investment Board meeting on June 23, 2004. The WIB is still in the process of working on their strategic plan. They will be discussing how the Workforce Investment Act monies will be expended and how to connect the WIB with economic development.

New River Valley Planning District Commission – Supervisor Perkins announced she was appointed Chairman to the NRVPDC, which is a two year term.

Peppers Ferry Regional Wastewater Treatment Authority –The PFRWTA is still investigating the fatal accident that occurred at the treatment facility.

Supervisor Spradlin reported several road concerns. He submitted a list of concerns on Nickel Lane and reported weeds need to be cut in Long Shop/McCoy and Keisters Branch.

Supervisor Muffo attended the public meeting hosted by the League of Women Voters on the electronic voting machines. The Montgomery County Electoral Board is reviewing four types of electronic voting machines. Supervisor Muffo believed this meeting was very informative. The Secretary to the State Board of Elections attended the meeting.

Supervisor Creed requested VDOT to check into widening the bridge on Alleghany Springs Road and Willis Hollow. This is a one lane bridge and the traffic has increased over the past few years.

Riffe Street – Supervisor Politis asked about the status of paving Riffe Street. VDOT had estimated the work would begin in the spring. To date, no work has occurred on the road.

Supervisor Biggs attended the MBC Development Corporation meeting. Shane Adams, Director of the Chamber of Commerce, made a presentation on tourism. Mr. Adams will be making this presentation to the County and the two Towns. Supervisors Biggs suggested holding a joint meeting with the two towns.

Kipps Elementary School – Maintenance of Ball Fields Supervisor Biggs received a complaint about pesticides being sprayed on the ball fields at Kipp Elementary School right before children were to practice ball. She was informed that the pesticide was Round Up and she will be contacting the Town of Blacksburg about this issue.

Resolution of Appreciation – Governor Warner and State Legislators – Supervisor Biggs formally withdrew her motion to forward a resolution of appreciation to Governor Warner and the State Legislators expressing appreciation over resolving the budget stalemate.

Assistant Principal – Christiansburg High School Supervisor Biggs congratulated Supervisor Perkins on her new job as Assistant Principal for the Christiansburg High School.

Supervisor Politis Satellite Rescue Squad Station in Riner Supervisor Politis met with the County Administrator, Emergency Services Coordinator, Riner Fire Chief , and the Christiansburg Rescue Squad Captain regarding the need for rescue services in the Riner area. They discussed the possibility of housing a rescue vehicle at the Riner Fire Station. Several issues still need to be discussed, as far as what type and size of complex is needed. This issue will be coming before the Board for support. Supervisor Politis expressed his concerns about the lack of emergency rescue services for the Riner area and believes a satellite station is needed.

Supervisor Perkins requested that staff conduct a study as to which areas in the County need satellite stations.

INTO CLOSED MEETING

On a motion by John A. Muffo, seconded by Annette S. Perkins and carried unanimously,

BE IT RESOLVED, The Board of Supervisors hereby enters into Closed Meeting for the purpose of discussing the following:

- Section 2.2-3711 (7) Consultation With Legal Counsel and Briefings by Staff Members or Consultants Pertaining to Actual or Probable Litigation, Where Such Consultation or Briefing in Open Meeting Would Adversely Affect the Negotiating or Litigating Posture of the Public Body
1. Water Agreement - Montgomery County and Town of Christiansburg- Shawsville Area
- (1) Discussion , Consideration or Interviews of Prospective Candidates for Employment; Assignment, Appointment, Promotion, Performance, Demotion, Salaries, Disciplining or Resignation of Specific Officers, Appointees or Employees of Any Public Body
1. Personnel
- (5) Discussion concerning a prospective business or industry or the expansion of an existing business or industry where no previous announcement has been made of the business= or industry=s interest in locating or expanding its facilities in the community.
1. Expansion of an Existing Business

The vote on the foregoing motion was as follows:

<u>AYE</u>	<u>NAY</u>
Doug Marrs	None
Steve L. Spradlin	
Gary D. Creed	
John A. Muffo	
Mary W. Biggs	
Annette S. Perkins	
James D. Politis	

OUT OF CLOSED MEETING

On a motion by John A. Muffo, seconded by Annette S. Perkins and carried unanimously,

BE IT RESOLVED, The Board of Supervisors ends their Closed Meeting to return to Regular Session.

The vote on the foregoing motion was as follows:

<u>AYE</u>	<u>NAY</u>
Doug Marrs	None
Steve L. Spradlin	
Gary D. Creed	
John A. Muffo	
Mary W. Biggs	
Annette S. Perkins	
James D. Politis	

CERTIFICATION OF CLOSED MEETING

On a motion by John A. Muffo, seconded by Annette S. Perkins and carried unanimously,

WHEREAS, The Board of Supervisors of Montgomery County has convened a Closed Meeting on this date pursuant to an affirmative recorded vote and in accordance with the provisions of the Virginia Freedom of Information Act; and

WHEREAS, Section 2.2-3711 of the Code of Virginia requires a certification by the Board that such Closed Meeting was conducted in conformity with Virginia law.

NOW, THEREFORE, BE IT RESOLVED, That the Board of Supervisors of Montgomery County, Virginia hereby certifies that to the best of each member's knowledge (i) only public business matters lawfully exempted from open meeting requirements by Virginia law were discussed in the closed meeting to which this certification resolution applies, and (ii) only such public business matters as were identified in the motion conveying the closed meeting were heard, discussed or considered by the Board.

VOTE

AYES

Doug Marrs
Steve L. Spradlin
Gary D. Creed
John A. Muffo
Mary W. Biggs
Annette S. Perkins
James D. Politis

NAYS

None

ABSENT DURING VOTE

None

ABSENT DURING MEETING

None

OTHER BUSINESS

**RESOLUTION: R-FY-05-05
RESOLUTION AMENDING THE FY 2003-2004
POSITION CLASSIFICATION PLAN**

On a motion by Mary W. Biggs, seconded by Annette S. Perkins and carried,

BE IT RESOLVED, By the Board of Supervisors of Montgomery County, Virginia that

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Montgomery County's FY 2003-2004 Position Classification Plan adopted July 28, 2003 is hereby amended to include the following changes:

1. Reclassification of Financial Management Services Director position from Grade 29, step 12 to Grade 30, step 12. \$74,578 ,5%.
2. Reclassification of Human Resources Director position from Grade 28, step 4 to Grade 29, step 4. \$58,276, 5%.
3. Adjustment of Economic Development Association Director position from Grade 22, step 10 to Grade 22, step 12. \$50,252, 5%.

The vote on the foregoing resolution was as follows:

AYE

Annette S. Perkins

Mary W. Biggs

Gary D. Creed

John A. Muffo

James D. Politis

NAY

Doug Marrs

Steve L. Spradlin

ADJOURNMENT

On a motion by Mary W. Biggs, seconded by Annette S. Perkins and carried unanimously, the Board adjourned to Monday, July 26, 2004 at 7:15 p.m.

The vote on the foregoing motion was as follows:

AYE

Mary W. Biggs

Doug Marrs

Steve L. Spradlin

Annette S. Perkins

Gary D. Creed

John A. Muffo

James D. Politis

NAY

None

The meeting adjourned at 11:00 p.m.